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December 7, 2000

VIA COURIER

Magalie R. Salas, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, NW, TW-A325
Washington, D.C. 20554

RECEIVED

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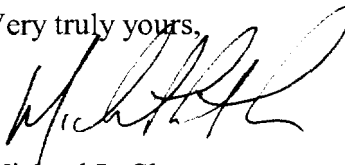
**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Re: **Request of Focal Communications Corporation For Clarification of Bell
Atlantic/GTE Merger Conditions**

Dear Secretary Salas:

On behalf of Focal Communications Corporation ("Focal"), enclosed for filing please find four copies of Focal's November 9, 2000 letter to Ms. Carol Matthey, Deputy Chief, Common Carrier Bureau, requesting clarification of certain Bell Atlantic/GTE Merger Conditions. The individuals listed below were served with copies of Focal's letter on or about November 9, 2000. Please date stamp the enclosed copy of this letter and return it to the undersigned with the waiting messenger.

Very truly yours,


Michael L. Shor

Enclosures

cc: Ms. Patricia Koch – Verizon (by mail, without attachment)
Mr. Michael Glover – Verizon “
Mr. Jeffrey Ward – Verizon “
Mr. Ken Moran, Chief, Accounting Safeguard Division “
Ms. Radika Karmarkar, Deputy Division Chief “
Mr. William Davenport, Special Counsel “
Mr. Anthony Dale, Attorney Advisor “
Mr. William Dever, Attorney Advisor “
Mr. Richard Metzger “
Ms. Jane Van Duzer “
Ms. Pamela Arluk “
Mr. Russell M. Blau “

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November 9, 2000

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RECEIVED

NOV 9 2000

FCC MAIL ROOM

VIA HAND DELIVERY

Ms. Carol Matthey, Deputy Chief
Federal Communications Commission
Common Carrier Bureau
445 12th Street, S.W.
Washington, DC 20554

Re: Request For Clarification of Bell Atlantic/GTE Merger Conditions

Dear Ms. Matthey:

On behalf of Focal Communications Corporation ("Focal"), we respectfully request that the Commission clarify certain post-merger obligations imposed on Verizon, Inc. by virtue of the Commission's Memorandum Opinion and Order entered in No. 98-184, at ¶¶ 300 - 305 and Appendix D ¶¶ 31, 32 (rel. June 16, 2000) ("Merger Conditions"). As set forth more fully below, Focal submits that Verizon is interpreting its obligation under the Merger Conditions to make available for in-region adoption an entire negotiated interconnection agreement in a manner that we contend is inconsistent with both the letter, and the spirit, of the Commission's Memorandum Opinion approving the requested merger between GTE Corporation ("GTE") and Bell Atlantic Corporation ("BA").

Issue Presented

Focal contends that Verizon has improperly interpreted its obligations under the Merger Conditions. Verizon refuses to make available to Focal for in-region adoption certain provisions of voluntarily negotiated interconnection agreements – such as reciprocal compensation, access to rights-of way, dialing parity and number portability – on the grounds that those "interconnection arrangements, UNEs, or provisions of an interconnection agreement" are found in section 251(b) of the Act.¹ As Verizon construes the Merger Conditions, it is only obligated to make available arrangements that are subject to section 251(c), without regard for that section's express reference to 251(b) obligations and duties. Focal submits that there is no such limitation in the Merger Conditions and if Verizon's interpretation is not corrected, it will eviscerate the Merger Conditions and undermine any benefits the Commission sought to bestow on other telecommunications carriers as a condition to approving the BA/GTE merger.

¹ The specific events giving rise to Focal's request for clarification are set forth in the accompanying Statement of Facts and the exhibits attached thereto.

Requested Relief

Focal requests that the Commission issue a clarification stating unequivocally that the Merger Conditions apply to “any interconnection arrangement, UNE, or provisions of an interconnection agreement (***including an entire agreement***) subject to 47 U.S.C. § 251(c)” ***and***, by specific reference therein, to obligations found in 47 U.S.C. § 251(b), as well. This interpretation is mandated by the express language of the Merger Conditions and advances the Commission’s goal of expanding the state-specific adoption rights of requesting carriers to cover the entire service territory of the merged entities.²

Discussion

Regulatory Framework

Paragraph 32 of the Merger Conditions sets forth the terms under which certain interconnection agreements that only were available for adoption within a state under section 252(i) of the Act before the merger became available for “in-region” adoption after the merger. Paragraph 32 states in pertinent part as follows:

Bell Atlantic/GTE shall make available: (1) in the Bell Atlantic Service Area to any requesting telecommunications carrier ***any interconnection arrangement, UNE, or provisions of an interconnection agreement (including an entire agreement)*** subject to 47 U.S.C. § 251(c) and Paragraph 39 of these Conditions that was voluntarily negotiated by a Bell Atlantic incumbent LEC with a telecommunications carrier, pursuant to 47 U.S.C. § 252(a)(1), prior to the Merger Closing Date. (Emphasis added).

In the Memorandum Opinion, the Commission explained this aspect of the Merger Conditions. First, the Commission clarified that the phrase “interconnection arrangement” “encompasses, both for out-of-region and in-region agreements, ***entire interconnection agreements or selected provisions from them.***” (Memorandum Opinion, ¶ 300, n. 686)(emphasis added). Then, the Commission stated exactly what was meant by Verizon’s obligations under paragraph 32 of the Merger Conditions:

Moreover, under the conditions to this merger, ***any voluntarily negotiated, in-region interconnection arrangement or UNE will be made available to requesting carriers in any other in-region service area of the particular legacy company whose interconnection arrangement or UNE is being extended.*** Thus, for

² Focal is not asking the Commission to interpret or to enforce any aspect of the GNAPs agreement or any other interconnection agreement that it has, or will, adopt pursuant to the Merger Conditions. The only issue before the Commission is Focal’s request to clarify certain provisions of the Merger Conditions themselves.

example, interconnection agreement provisions voluntarily negotiated by Bell Atlantic's incumbent LEC in New York prior to the merger closing date will be made available to a requesting carrier seeking to compete in the Bell Atlantic/GTE service area in Maryland, which is a legacy Bell Atlantic service area. (Memorandum Opinion at ¶ 305)(emphasis added).

Focal's Position

Verizon's obligations under the Memorandum Opinion and Merger Conditions are crystal clear: a requesting telecommunications carrier is entitled to adopt **any** interconnection arrangement, including an **entire** agreement, so long as it was voluntarily negotiated – pre-merger – anywhere in Bell Atlantic's legacy service area. The Memorandum Opinion and Merger Conditions do not permit Verizon to limit the types of arrangements or provisions which a carrier, such as Focal, is entitled to adopt³, especially given Focal's right to adopt an entire agreement, if it so chooses, yet that is precisely the result which Verizon advocates.

Verizon takes an entirely different position, arguing that it is only obligated to make available to Focal those provisions of an interconnection agreement which are subject to section 251(c) of the Act.⁴ Verizon's view ignores entirely the express language of the Merger Conditions and Memorandum Opinion which specifically allows Focal to adopt an "entire agreement." This is precisely what Focal sought to do in Virginia, Delaware, the District of Columbia and Massachusetts, yet Verizon refused. Focal submits that the Commission could not have spoken with greater clarity and Focal is hard-pressed to understand which portion of the phrase "entire agreement" in paragraph 32 Verizon did not – and does not – comprehend.

In addition to ignoring the unambiguous language of the Merger Conditions, Verizon's argument ultimately finds no support in the Act. By its terms, section 251(c) – which sets forth **additional** obligations that apply only to incumbent LECs – incorporates explicitly and unequivocally the obligations and duties of section 251(b). Thus, section (c) states that

In addition to the duties contained in subsection (b), each incumbent exchange carrier has the following duties:

(1) DUTY TO NEGOTIATE. – The **duty to negotiate in good faith** in accordance with section 252 **the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection.** 47 U.S.C. § 251(c) (emphasis added).

³ State commissions have the authority, under paragraph 32, to determine whether any particular interconnection arrangement or UNE is available in a particular state.

⁴ See, Exhibits 2 (pp. 2-3), 5 (pp. 2-3) and 8 (pp. 3-4).

In short, section 251(c) does not stand alone, as Verizon argues. Instead, it is inextricably linked to, and incorporates by express reference, all of the duties of section 251(b) that Verizon contends are excluded from its obligations under the Merger Conditions. The two subsections are joined in the Act and Verizon's efforts to uncouple its 251(b) obligations from those set forth in 251(c) must be rejected.

Equally important, there can be no legitimate dispute that the unequivocal obligations of paragraph 32 of the Merger Conditions, as explained in the Memorandum Opinion, expand the state-specific adoption duties imposed on Verizon by section 252(i) of the Act⁵ to encompass a region-wide duty.⁶ Indeed, the Commission has recognized that an essential benefit of a carrier's section 252(i) opt-in rights is the ability to avoid the burden of having to negotiate and/or to arbitrate a custom-crafted agreement over the time frame of Section 252, when existing agreements are suitable and available.⁷ It is apparent that the Commission intended in paragraph 32 of the Merger Conditions to extend these benefits throughout the legacy Bell Atlantic and GTE service areas as a condition of approving the merger.

The benefits of these expanded opt-in opportunities are completely eviscerated under Verizon's interpretation of its obligations under the Merger Conditions. If all that Focal can adopt across borders is a skeletal agreement consisting only of those minimal duties expressly set forth in section 251(c) of the Act, then it would be forced either to curtail its operations dramatically or to initiate the time-consuming process of negotiating and then arbitrating the very 251(b) duties, arrangements and services – reciprocal compensation, access to rights-of way, dialing parity and number portability, among others – that had been contained in, but carved out of, the agreement Focal had adopted in order to avoid that lengthy, expensive process.⁸ This simply cannot be the result envisioned by the Commission when it directed Verizon to make available "entire agreements" under the Merger Conditions.

Section 252(i) of the 1996 Act requires incumbent LECs to:

... make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier *upon the same terms and conditions* as those provided in the agreement.

See, Memorandum Opinion at ¶ 305.

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order, CC Docket Nos. 96-98 and 95-185, at ¶ 1321 (released August 8, 1996).

The fact that some of these services or arrangements might be available under an separate agreement available in the adopting state does not mitigate the harm done by Verizon's limited interpretation of its obligations under paragraph 32. That paragraph does not limit a requesting carrier's in-region adoption rights in the manner articulated by Verizon.

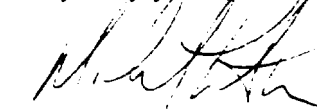
Conclusion

In sum, it is apparent that Verizon has adopted an unreasonably narrow and entirely unsupported interpretation on the obligations imposed by paragraph 32 of the Merger Conditions. The Commission should not underestimate the negative impact that such a limited reading has on the development of competition throughout the expanded Verizon service area. Allowing Verizon unfettered authority to limit the express obligations of the Merger Conditions, and then to force competing exchange carriers to litigate the meaning of those Conditions as well as the availability of various interconnection arrangements, UNEs and provisions before state commissions will bring effective competition to a grinding halt.

Focal respectfully requests that the Commission promptly issue a clarification to the Memorandum Opinion stating explicitly and unequivocally that the Merger Conditions apply to "any interconnection arrangement, UNE, or provisions of an interconnection agreement (*including an entire agreement*) subject to 47 U.S.C. § 251(c)" *and*, by specific reference therein, to obligations found in 47 U.S.C. § 251(b), as well.

Focal reserves the right to reply to any response that Verizon might have to this request for clarification.

Very truly yours,



Michael L. Shor

encl.

cc:	Mr. Ken Moran, Chief, Accounting Safeguard Division	(by hand)
	Ms. Radika Karmarkar, Deputy Division Chief	"
	Mr. William Davenport, Special Counsel	"
	Mr. Anthony Dale, Attorney Advisor	"
	Mr. William Dever, Attorney Advisor	"
	Mr. Patrick Koch – Verizon	"
	Mr. Michael Glover – Verizon	"
	Mr. Jeffrey Ward – Verizon	"
	Mr. Richard Metzger – Focal Communications Corp.	
	Ms. Jane Van Duzer – Focal Communications Corp.	
	Ms. Pamela Arluk – Focal Communications Corp.	
	Mr. Russell M. Blau	

STATEMENT OF FACTS

1. Virginia: By letter dated August 10, 2000, Focal advised Verizon that, pursuant to the Merger Conditions, it intended to adopt in Virginia the negotiated, pre-merger, interconnection agreement by and between Bell Atlantic–Vermont and Global NAPs (the “GNAPs Agreement”).⁹ By letter dated August 23, 2000, Verizon responded to Focal’s request, stating among other things that the reciprocal compensation provisions of the GNAPs Agreement were not available for cross-border adoption.¹⁰ Verizon stated this position as follows:

the Merger Conditions’ MFN obligation on which Focal relies extends only to interconnection arrangements, UNEs, or provisions of an interconnection agreement that are ‘subject to 47 U.S.C. § 251(c)’ As you know, the obligation of local exchange carriers to pay one another reciprocal compensation for local traffic is found not in Section 251(c), but in Section 251(b), of the Act. On its face, therefore, the Merger Conditions’ provision on which Focal relies does not extend to the reciprocal compensation provisions of Verizon’s interconnection agreements. (Exhibit 2 at p. 2).

Separate and apart from Verizon’s view that section 251(b) obligations are not available for cross-border adoption under the Merger Conditions, Verizon also took the untenable position that a reciprocal compensation provision of a negotiated agreement – not just the rate of compensation, but the very obligation to compensate Focal for transporting and terminating traffic – “would not in any case be subject to the cross-state MFN provisions of the Merger Conditions, since it is a state-specific pricing arrangement” (Exhibit 2 at 3).

By letter dated August 31, 2000, Focal responded to Verizon, indicating that it disagreed with the positions Verizon had stated in its letter and expressly reserved all rights related to its adoption of the GNAPs agreement.¹¹ Moreover, in conversations with Verizon’s counsel, the undersigned expressly disagreed with and challenged Verizon’s interpretation of the Merger Conditions with respect to the reciprocal compensation provisions of the GNAPs agreement.

2. Delaware: By letter dated August 23, 2000, Focal advised Verizon that, pursuant to the Merger Conditions, it intended to adopt in Delaware the same pre-merger

⁹ A copy of Focal’s August 10 letter to Verizon is attached as Exhibit 1.

¹⁰ A copy of Verizon’s August 23 letter to Focal is attached as Exhibit 2.

¹¹ A copy of Focal’s August 31 letter to Verizon is attached as Exhibit 3.

GNAPs–Vermont agreement that it was adopting in Virginia.¹² By letter dated September 11, 2000, Verizon responded to Focal's request, stating again that the reciprocal compensation provisions of the GNAPs Agreement were not available for cross-border adoption based on exactly the same reasons announced in its earlier letter.¹³ By letter dated September 27, 2000, Focal responded to Verizon, indicating that it disagreed with the positions Verizon had stated in its letter and expressly reserved all rights related to its adoption of the GNAPs agreement.¹⁴

3. District of Columbia: By letter dated July 18, 2000, Focal advised Verizon that, pursuant to the Merger Conditions, it intended to adopt in the District of Columbia the GNAPs Agreement.¹⁵ By letter dated September 11, 2000, Verizon responded to Focal's request, stating for the third time that the reciprocal compensation provisions of the GNAPs Agreement were not available for cross-border adoption based on exactly the same reasons announced in its earlier letters.¹⁶ By letter dated September 27, 2000, Focal responded to Verizon, indicating again that it disagreed with the positions Verizon had stated in its letter and expressly reserved all rights related to its adoption of the GNAPs agreement.¹⁷

4. Massachusetts: By letter dated September 12, 2000, Focal advised Verizon that, pursuant to the Merger Conditions, it intended to adopt in Massachusetts the same pre-merger GNAPs–Vermont agreement that it was adopting in other states.¹⁸ On or about October 27, 2000, in the course of a telephone conversation between counsel for the parties, Verizon repeated its view that the reciprocal compensation provisions of the GNAPs Agreement could not be adopted cross-border. In addition, counsel for Verizon stated that the access to rights-of-way, dialing parity and number portability aspects of that agreement were not available for cross-border adoption either. He stated that those arrangements were not available for two reasons: they arise under section 251(b) of the Act, not section 251(c) and because they are available to Focal under existing Massachusetts agreements.

¹² A copy of Focal's August 23 letter to Verizon is attached as Exhibit 4.

¹³ A copy of Verizon's September 11 letter to Focal is attached as Exhibit 5.

¹⁴ A copy of Focal's September 27 letter to Verizon is attached as Exhibit 6.

¹⁵ A copy of Focal's July 18 letter to Verizon is attached as Exhibit 7.

¹⁶ A copy of Verizon's September 11 letter to Focal is attached as Exhibit 8.

Verizon also suggested in its September 11 letter that the reciprocal compensation provisions of the GNAPs agreement were not available to Focal in the District of Columbia because it believes those provisions are "inconsistent with D.C. law and policy." (Exhibit 8 at 3). Focal does not seek any guidance, clarification or interpretation of this aspect of Verizon's position; that is properly the function of the D.C. Public Service Commission.

¹⁷ A copy of Focal's September 27 letter to Verizon is attached as Exhibit 9.

¹⁸ A copy of Focal's September 12 letter to Verizon is attached as Exhibit 10.

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August 10, 2000

VIA OVERNIGHT DELIVERY

Mr. Jeffrey Masoner
Vice-President, Interconnection Services
Policy & Planning
Bell Atlantic Wholesale Market
1320 N. Courthouse Road, 2nd Floor
Arlington, VA 22201

Re: Notice to Bell Atlantic - Virginia, Inc. of Focal Communications Corporation of Virginia's Adoption of the Interconnection Agreement Between Bell Atlantic-Vermont and Global NAPS, Inc. Pursuant to Paragraph 32 of the BA/GTE Merger Conditions

Dear Mr. Masoner:

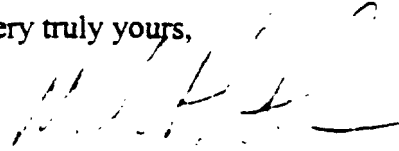
Focal Communications Corporation of Virginia ("Focal") hereby notifies Bell Atlantic - Virginia, Inc. ("BA-VA") that it will adopt in Virginia, pursuant to the Memorandum Opinion and Order of the Federal Communications Commission in CC Docket No. 98-184, at ¶ 305 and Appendix D ¶ 32 (rel. June 16, 2000) ("BA/GTE Merger Conditions"), the negotiated interconnection agreement between Bell Atlantic - Vermont and Global NAPS ("GNAPS") effective as of November 1, 1998, as approved by the Vermont Public Service Board in Docket No. 6151 (the "Agreement").

A completed Information Request Form and two completed Opt-In Agreements, which have been executed by a duly authorized representative at Focal, are enclosed. Please have a duly authorized representative of BA-Virginia execute the Opt-In Agreements in the spaces designated on the signature pages and return one fully executed original to my attention at the above address.

Mr. Jeffrey Masoner
August 10, 2000
Page Two

Thank you in advance for your prompt attention to this matter. Should you have any questions regarding this request, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael L. Shor", written over a horizontal line.

Michael L. Shor
Counsel for Focal Communications Corporation
of Virginia

Enc: Opt-In Agreement
Information Request Form

cc: Richard Metzger
David Tatak
Jane Van Duzer

ORIGINAL

Chris T. Antoniou
Senior Interconnection Counsel
Verizon Services Corp



1320 North Court House Road
8th Floor
Arlington, Virginia 22201

Phone: 703-974-4857
Fax: 703-974-0665

Email: Christos.T.Antoniou@verizon.com

August 23, 2000

Michael L. Shor, Esq.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116

Re: Focal Communications Corporation of Virginia's Adoption of the
Terms of the Interconnection Agreement Between Global NAPS, Inc. and
Verizon Vermont Inc. Pursuant to the BA/GTE Merger Conditions

Dear Michael:

I am responding to your letter to Jeffrey Masoner, dated August 10, 2000, on behalf of Focal Communications Corporation of Virginia ("Focal").

In that letter, you stated that Focal wishes to adopt, in the service territory of Verizon Virginia Inc., f/k/a Bell Atlantic-Virginia, Inc. ("Verizon Virginia"), pursuant to the BA/GTE Merger Conditions (the "Merger Conditions"), the terms of the interconnection agreement between Global NAPS, Inc. ("GNAPs") and Verizon New England Inc., f/k/a Bell Atlantic - Vermont ("Verizon Vermont"), that was approved by the Vermont Commission as an effective agreement in the State of Vermont, as such agreement exists on the date hereof after giving effect to operation of law (the "Terms"). I understand that Focal has a copy of the Terms which, in any case, are attached as Appendix 1 hereto. Except as noted below with respect to Vermont state-specific pricing provisions and with respect to the reciprocal compensation provisions (at section 5.7.2) of the GNAPs Vermont agreement (which are also excluded as state-specific pricing provisions), Verizon Virginia does not oppose your adoption of the Terms at this time. However, please note the following with respect to Focal's adoption of the Terms.

1 By Focal's countersignature on this letter, Focal hereby represents and commits to the following three points:

(A) Focal adopts in the service territory of Verizon Virginia the Terms of the GNAPs Vermont agreement with Verizon Vermont, and in applying the Terms, agrees that Focal shall be substituted in place of GNAPs in the Terms wherever appropriate.

(B) Focal requests that notice to Focal as may be required or permitted under the Terms shall be provided as follows:

To : Focal Communications Corporation of Virginia
Attn: Director – Regulatory Affairs
200 N. LaSalle Street, Suite 1100
Chicago, Illinois 60601
Facsimile: (312) 895-8403
Phone: (312) 895-8400

(C) Focal represents and warrants that it is a certified provider of local telecommunications service in the Commonwealth of Virginia, and that its adoption of the Terms will only cover services in the service territory of Verizon Virginia in the Commonwealth of Virginia.

2. Focal's adoption of the GNAPs Vermont agreement Terms shall become effective upon the date that Verizon Virginia files this letter with the Virginia Commission (which Verizon Virginia will promptly do upon my receipt of a copy of this letter, countersigned by Focal as to points (A), (B) and (C) of paragraph 1 above) and remain in effect no longer than the date the GNAPs Vermont agreement Terms are terminated or expire. The GNAPs Vermont agreement is currently scheduled to expire on October 31, 2001.

3. As the Terms are being adopted by you pursuant to the Merger Conditions, Verizon Virginia does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by Verizon Virginia of the Terms does not in any way constitute a waiver by Verizon Virginia of any position as to the Terms or a portion thereof. Nor does it constitute a waiver by Verizon Virginia of any rights and remedies it may have to seek review of the Terms, or to seek review of any provisions included in these Terms as a result of Focal's election pursuant to the Merger Conditions.

4. Focal's adoption of the Terms pursuant to the Merger Conditions is subject to all of the provisions of such Merger Conditions. For example, state-specific pricing and state-specific performance measures from the GNAPs Vermont agreement shall not apply to Focal's adoption of the Terms in Virginia. In that regard, Verizon Virginia's standard pricing schedule for interconnection agreements (as such schedule may be amended from time to time) (attached as Appendix 2 hereto) shall apply to Focal's adoption of the Terms.

In addition, the Merger Conditions' MFN obligation on which Focal relies extends only to interconnection arrangements, UNEs, or provisions of an interconnection agreement that are "subject to 47 U.S.C. § 251(c)" As you know, the obligation of local exchange carriers to pay one another reciprocal compensation for local traffic is found not in Section 251(c), but in Section 251(b), of the Act. On its face, therefore, the Merger Conditions' provision on which Focal relies does not extend to the reciprocal compensation provisions of Verizon's interconnection agreements.

Even if this provision of the Merger Conditions were to be misconstrued as encompassing not only items subject to Section 251(c), but also items subject to Section 251(b), it would still not obligate Verizon to permit the cross-state adoption of compensation terms pertaining to Internet traffic. The FCC's February 1999 order expressly found that Internet traffic is not local. Accordingly, even if the GNAPS Vermont agreement were mistakenly construed as a voluntary commitment to pay compensation on Internet traffic, that commitment would be entirely outside the scope of the requirements of Section 251, and therefore not subject to the cross-state MFN provisions of the Merger Conditions.

Furthermore, and as discussed in more detail in paragraph 7 below, section 5.7.2.3 of the GNAPs Vermont agreement (which deals with Internet traffic) would not in any case be subject to the cross-state MFN provisions of the Merger Conditions, since it is a state-specific pricing arrangement and, in addition, by its own terms, does not provide for payment of reciprocal compensation on Internet traffic, given the FCC's February 1999 order expressly finding that Internet traffic is not local.

In addition, Focal's adoption of the GNAPs Vermont agreement Terms shall not obligate Verizon Virginia to provide any interconnection arrangement or unbundled network element unless it is feasible to provide given the technical, network and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the Commonwealth of Virginia and with applicable collective bargaining agreements.

5. On January 25, 1999, the Supreme Court of the United States issued its decision on the appeals of the Eighth Circuit's decision in *Iowa Utilities Board*. The Supreme Court modified several of the FCC's and the Eighth Circuit's rulings regarding unbundled network elements and pricing requirements under the Act. *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999). Certain provisions of the Terms may be void or unenforceable as a result of the Supreme Court's decision of January 25, 1999 and the remand of the pricing rules to the United States Eighth Circuit Court of Appeals. Moreover, nothing herein shall be construed as or is intended to be a concession or admission by Verizon Virginia that any provision in the Terms complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commissions, the decisions of the courts, or other law, and Verizon Virginia expressly reserves its full right to assert and pursue claims arising from or related to the Terms.

6. Verizon Virginia reserves the right to deny Focal's adoption and/or application of the Terms, in whole or in part, at any time:

- (A) when the costs of providing the Terms to Focal are greater than the costs of providing them to GNAPs;
- (B) if the provision of the Terms to Focal is not technically feasible; and/or
- (C) if Verizon Virginia is not obligated to permit such adoption and/or application under the Merger Conditions or otherwise under applicable law.

7. As noted above in paragraph 6, pursuant to Rule 809 of the FCC Regulations, the FCC gave ILECs the ability to deny 252(i) adoptions (and adoptions pursuant to the Merger Conditions, since the 252(i) rules also apply thereto) in those instances in which the cost of providing the service to the requesting carrier is higher than that incurred in serving the initial carrier or in which there is a technical incompatibility issue. The issue of reciprocal compensation for traffic destined for the Internet falls within this exception. Verizon Virginia never intended for Internet traffic to be included within the definition of local traffic and subject to the corresponding obligation of reciprocal compensation. Despite the foregoing, some forums have required reciprocal compensation to be paid. This produces the situation in which the cost of providing the service is not cost based. With this in mind, Verizon Virginia opposes, and reserves the right to deny, the adoption and/or the application of the provisions of the Terms (e.g., section 5.7.2.3 of the GNAPS Vermont agreement) that might be interpreted to characterize traffic destined for the Internet as local traffic or requiring the payment of reciprocal compensation.

If, notwithstanding the foregoing, as well as the pricing provision exclusion set forth in the Merger Conditions and the exclusions described in paragraph 4 above, Focal nonetheless believes that the GNAPs Vermont agreement somehow provides reciprocal compensation for ISP-bound traffic, it should note that, pursuant to section 5.7.2.3 of that agreement, Verizon Vermont would not be obligated to pay reciprocal compensation for that traffic. The GNAPs Vermont agreement is essentially a clone of an agreement between GNAPs and Verizon New York Inc., doing business as Verizon New York, successor in interest to New York Telephone Company, formerly doing business as Bell Atlantic – New York, for the state of New York. In the New York agreement, GNAPs and Verizon New York negotiated the following terms with respect to Internet traffic:

5.7.2.3. The Parties stipulate that they disagree as to whether traffic that originates on one Party's network and is transmitted to an Internet Service Provider ("ISP") connected to the other Party's network ("ISP Traffic") constitutes Local Traffic as defined herein, and the charges to be assessed in connection with such traffic. The issue of whether such traffic constitutes Local Traffic on which reciprocal compensation must [sic] be paid pursuant to the 1996 Act is presently before the FCC in CCB/CPD 97-30 and may be before a court of competent jurisdiction. The Parties agree that the decision of the FCC in that proceeding, or as [sic] such court, shall determine whether such traffic is Local Traffic (as defined herein) and the charges to be assessed in connection with ISP Traffic. If the FCC or such court determines that ISP Traffic is Local Traffic, as defined herein, or otherwise determines that ISP Traffic is subject to reciprocal compensation, it shall be compensated as Local Traffic under this Agreement unless another compensation scheme is required under such FCC or court determination. Until resolution of this issue, BA agrees to pay GNAPS Reciprocal Compensation for ISP traffic (without conceding that ISP Traffic constitutes Local Traffic or precluding BA's ability to seek appropriate court review of this issue) pursuant to the [New York Public Service] Commission's Order in Case 97-C-1275, dated March 19, 1998, as such Order may be modified, changed or reversed.

The same section 5.7.2.3 was copied into the GNAPs Vermont agreement.

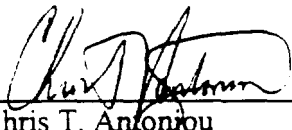
At the time the New York and Vermont agreements were signed, GNAPs and Verizon Vermont were awaiting the FCC's decision in CCB/CPD 97-30 on the Internet traffic issue. As is clear from section 5.7.2.3, the parties intended that Verizon Vermont would be unconditionally obligated to pay reciprocal compensation on Internet traffic only if the FCC (or a court of competent jurisdiction) were to determine that Internet traffic is local traffic. As you know, the FCC subsequently decided to the contrary, finding that Internet traffic is not local, but interstate and interexchange. Therefore, the conditional event in the GNAPs agreements has occurred, with the result that Focal, in adopting the GNAPs Vermont agreement Terms, is precluded from receiving reciprocal compensation on Internet traffic on this basis alone, as well as on the other bases described in this letter.

8. Should Focal attempt to apply the Terms in a manner that conflicts with paragraphs 3-7 above, Verizon Virginia reserves its rights to seek appropriate legal and/or equitable relief.

Please arrange for a duly authorized representative of Focal to sign this letter in the space provided below and return it to the undersigned.

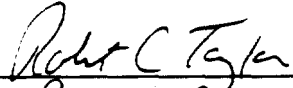
Sincerely,

Verizon Virginia Inc.


Chris T. Antoniou
Senior Interconnection Counsel

Reviewed and countersigned as to points A, B, and C of paragraph 1:

Focal Communications Corporation of Virginia


By Robert C. Taylor
Title Chief Executive Officer

Attachments

cc: Joel H. Peck
Don R. Mueller
John F. Dudley
Jeffrey Masoner
Lydia Pulley

ORIGINAL

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

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August 31, 2000

VIA OVERNIGHT MAIL

Chris T. Antoniou
Senior Interconnection Counsel
Verizon Services Corp.
1320 North Court house Road
8th Floor
Arlington, VA 22201

Re: Focal Communications Corporation of Virginia's Adoption of the Interconnection Agreement Between Bell Atlantic-Vermont and Global NAPS, Inc. Pursuant to Paragraph 32 of the BA/GTE Merger Conditions

Dear Mr. Antoniou:

On August 10, 2000, Focal Communications Corporation of Virginia ("Focal") notified Verizon Virginia Inc., f/k/a Bell Atlantic-Virginia, Inc., ("Verizon") that it elected, pursuant to the Memorandum Opinion and Order of the Federal Communications Commission in CC Docket No. 98-184, at ¶ 305 and Appendix D ¶ 32 (rel. June 16, 2000) ("BA/GTE Merger Conditions"), to adopt in the Commonwealth of Virginia the negotiated interconnection agreement between Bell Atlantic - Vermont and Global NAPS ("GNAPS") effective as of November 1, 1998, as approved by the Vermont Public Service Board in Docket No. 6151 (the "Agreement"). I am enclosing herewith the adoption letter you sent on August 23, 2000 (the "Adoption Letter") that responded to Focal's August 10, 2000 notification which has been executed by Focal.

Focal has signed the Adoption Letter prepared by Verizon to signify that it agrees *only* with respect to points 1(A), 1(B), and 1(C) on pages 1 and 2 of the letter. Focal understands the balance of the Adoption Letter to be simply a statement of Verizon's position on various issues. Focal does not agree with, and is not bound by, Verizon's statement of position, although Focal does agree that neither party shall be deemed to have waived any rights by signing the Adoption Letter. However, Focal does take specific exception to your statement in paragraph 2 that the Agreement is effective on filing. Focal submits that, since this is an adoption of a previously approved agreement, it should be effective as of the date it was requested, i.e., August 10, 2000, not the date of filing with the Virginia State Corporation Commission ("Virginia Commission").

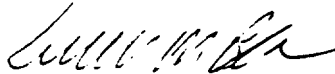
Chris T. Antoniou, Esq.
August 31, 2000
Page 2

Focal's execution of the Adoption Letter shall not be construed as, nor is it intended to be, a concession, waiver, stipulation, admission, or other evidence that any provision of the Agreement complies with the rights and duties imposed by the Act, decisions and orders of the FCC, decisions and orders of the Commission, the decisions of federal or state courts, or other applicable law. Focal expressly reserves its full right to assert and to pursue any claims, in any forum of competent jurisdiction, including but not limited to those arising from or related to the Agreement, the Act, and FCC or Commission orders and rules.

Since it is Verizon's intention to file the Adoption Letter along with the Agreement itself with the Virginia Commission, Focal requests that Verizon attach this letter to the filing as well. In addition, please instruct the Verizon attorneys who are responsible for filing the Adoption Letter and the Agreement with the Virginia Commission to identify me as Focal's counsel of record in the filing. Of course, I will appreciate a courtesy copy of all filings associated with the Adoption Letter and the Agreement.

Thank you in advance for your cooperation and assistance in this matter.

Very truly yours,



Russell M. Blau
Michael L. Shor

Counsel for Focal Communications Corporation of
Virginia

Enclosures

cc: Joel H. Peck
Don R. Mueller
John F. Dudley
Jeffery Masoner
Warner Brundage, Jr.
David Hill
Richard Metzger
Jane Van Duzer
Philip J. Macres



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NEW YORK OFFICE
405 LEXINGTON AVENUE
NEW YORK, NY 10174

August 23, 2000

VIA OVERNIGHT DELIVERY

Mr. Jeffrey Masoner
Vice-President, Interconnection Services
Policy & Planning
Bell Atlantic Wholesale Market
1320 N. Courthouse Road, 2nd Floor
Arlington, VA 22201

Re: Notice to Verizon Delaware Inc. (formerly Bell Atlantic - Delaware, Inc.) of Focal Communications Corporation of Pennsylvania's Adoption of the Interconnection Agreement Between Bell Atlantic-Vermont and Global NAPS, Inc. Pursuant to Paragraph 32 of the BA/GTE Merger Conditions

Dear Mr. Masoner:

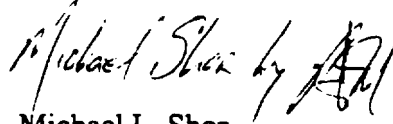
By letter dated, June 15, 2000, Focal Communications Corporation of Pennsylvania ("Focal") notified Bell Atlantic - Delaware, Inc. ("BA-DE") of its intent to adopt the interconnection agreement between PaeTec Communications, Inc. and BA-DE (the "Pae Tec Agreement"). Jennifer Van Scoter responded, by letter dated July 7, 2000, and notified Focal that the PaeTec Agreement was not available for adoption because it purportedly had expired. Without accepting the validity of that claim or waiving any rights to contest it, Focal hereby notifies Verizon Delaware Inc. ("Verizon Delaware"), formally BA-DE, that it will adopt in the State of Delaware, pursuant to the Memorandum Opinion and Order of the Federal Communications Commission in CC Docket No. 98-184, at ¶ 305 and Appendix D ¶ 32 (rel. June 16, 2000) ("BA/GTE Merger Conditions"), the negotiated interconnection agreement between Bell Atlantic - Vermont and Global NAPS ("GNAPS"), effective as of November 1, 1998, as approved by the Vermont Public Service Board in Docket No. 6151 (the "Agreement").

A completed Information Request Form and two completed Opt-In Agreements, which have been executed by a duly authorized representative at Focal, are enclosed. Please have a duly authorized representative of Verizon Delaware execute the Opt-In Agreements in the spaces designated on the signature pages and return one fully executed original to my attention at the above address.

Mr. Jeffrey Masoner
August 23, 2000
Page Two

Thank you in advance for your prompt attention to this matter. Should you have any questions regarding this request, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Michael L. Shor" followed by a stylized flourish or set of initials.

Michael L. Shor
Counsel for Focal Communications Corporation
of Pennsylvania

Enc: Opt-In Agreements
Information Request Form

cc (w/ one copy of Opt-In Agreement):

Richard Metzger
David Tatak
Jane Van Duzer
Karen J. Nickerson
G. Arthur Padmore
Connie S. McDowell
David A. Hill

